KENNETH LEXA

IBLA 94-400, 94-401 Decided February 24, 1997

Consolidated appeals from separate decisions of the Idaho State Office, Bureau of Land Management, declaring mining claims void. IMC 38373-IMC 38374, IMC 38395, IMC 38399, IMC 38408-IMC 38411, IMC 38413-IMC 38414; IMC 137919-IMC 137928.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   If a mining claimant fails to pay the rental fees required by the Act of Oct. 5, 1992, or file the required certificates of exemption on or before Aug. 31, 1993, the claims are properly deemed abandoned and void. No grace period for filing late certificates of exemption from the rental fee requirement has been provided by Departmental regulation; those documents must be received by BLM on or before the date required by regulation.

2. Notice: Generally--Regulations: Generally--Statutes

   All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Notice: Generally

   A claimant's assertion that he had not been given an adequate opportunity to become familiar with the rental fee requirements of the Act of Oct. 5, 1992, and its implementing regulations, which were published just over a month before compliance with their provisions was required provides no basis for reversing a decision declaring his claims abandoned and void for failure to comply with those requirements.

4. Estoppel

Reliance on the oral misstatements of a BLM employee will not support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official decision.

5. Mining Claims: Abandonment--Mining Claims: Lands Subject to--Mining Claims: Relocation--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Rights acquired under a relocation of a mining claim determined to be abandoned and void for failure to timely pay the rental fee or file a certificate of exemption do not relate back to the date of the location of the original claim but only to the date of relocation. When such a claim is located on land withdrawn from mineral entry, it is properly declared null and void ab initio.

APPEARANCES: Brian H. Collins, Esq., Spokane, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE PRICE

These are consolidated appeals by Kenneth Lexa from two March 8, 1994, decisions of the Idaho State Office, Bureau of Land Management (BLM), declaring certain mining claims void. One decision declared 10 claims abandoned and void for failure to pay rental in the amount of $100 per claim or to file a certificate of exemption from payment of rental by August 31, 1993. The other decision declared Lexa's attempted relocations of those claims null and void ab initio because they are in the Gospel Hump Wilderness Area and the lands are no longer open to entry under the mining laws. 1/

1/ Lexa's appeal from the decision declaring the claims abandoned and void for failure to pay the rental or to file a certificate of exemption has been docketed as IBLA 94-401. His appeal from the decision declaring his attempted relocations of those claims null and void ab initio has been docketed as IBLA 94-400. The claims are listed as follows:

Claim Name	Orig. Serial No.	Relocation No.
Little Bear Pl.	IMC 38373	IMC 137919
Little Bear Pl. #2	IMC 38374	IMC 137920
Little Bear #20	IMC 38395	IMC 137921
Little Bear #24	IMC 38399	IMC 137922
Little Bear #33	IMC 38408	IMC 137923
Little Bear #34	IMC 38409	IMC 137924
Little Bear #35	IMC 38410	IMC 137925
Little Bear #36	IMC 38411	IMC 137926
Little Bear #38	IMC 38413	IMC 137927
Little Bear #39	IMC 38414	IMC 137928

[1] We will first consider Lexa's appeal from the decision declaring the original claims abandoned and void. This decision is based on a provision of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1378-79 (1992), that requires each claimant to "pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993," for each unpatented mining claim, mill or tunnel site to hold such claim for the assessment year ending at noon on September 1, 1993. (Emphasis added.) The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional $100 rental fee on or before August 31, 1993. 106 Stat. 1378-79 (1992).

The only exemption provided from this rental fee requirement is the so-called "small miner exemption," available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). Washburn Mining Co., 133 IBLA 294, 296 (1995). The regulations require that a claimant apply for the small miner exemption by filing separate certificates of exemption on or before August 31, 1993, supporting the exemption for each assessment year claimed. 43 CFR 3833.1-7(d) (1993). If a mining claimant fails to pay the required rental fees or file separate certificates of exemption on or before August 31, 1993, the claims are properly deemed abandoned and void.

No grace period for filing late certificates of exemption from the rental fee requirement has been provided by Departmental regulation; those documents must be received by BLM on or before the date required by regulation. See 43 CFR 3833.0-5(m); Nannie Edwards, 130 IBLA 59 (1994). This strict filing requirement is imposed in recognition of the requirement imposed by Congress that for every unpatented mining claim, "each claimant shall, except as otherwise provided by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993." 106 Stat. 1378 (1992).

Appellant was previously the owner of 45 unpatented mining claims collectively called the Little Bear Group, but prior to August 31, 1993, he quitclaimed all except 10 claims in order to qualify for the small miner exemption. Appellant has submitted an affidavit stating that he had reviewed BLM's March 5, 1993, news release concerning the rental fee requirement and small miner exemption and that he telephoned BLM and was referred to Richard Deery, with whom he spoke on two separate occasions in July 1993.

> During my discussions with Mr. Deery, he advised me that I could quit claim my interest in the Little Bear Claim Group to others, and I could retain 10 and fewer claims. Further he advised me that if each claimant held 10 or fewer claims each of us would qualify for the exemption from payment of the annual rental fee. Mr. Deery also advised me that because I was the original owner of the claims, I would not need to file a certification form to be exempt from payment of the rental fees.

(Affidavit at 2-3). Appellant further states that he did not obtain a copy of the regulations until July or early August 1993 and found them to be confusing. Appellant states that he completed the small miner exemption certificates for the other claimants but "did not complete a certification form for myself because Mr. Deery had advised me that I did not need to do so" (Affidavit at 3).

After the other claimants signed their certificates, appellant went to the State office to file them in person early on the morning of August 31. He relates that he was assisted by Diane Hartman, who "examined the documents and confirmed that it was unnecessary for me to file the certification form for my 10 claims * * * but said copies of the quitclaim deeds and Affidavit of Assessment Work had to be filed" (Affidavit at 4).

Appellant asserts that Hartman "held herself out as understanding the new regulations" and offered assistance so that the persons to whom appellant quitclaimed the claims could qualify for the exemption:

> Ms. Hartman specifically told me that it was unnecessary for me to complete and file the certification form (OMB No. 1004-0114) to receive the Small Miner's Exemption. Ms. Hartman explained that I would receive the Small Miner's Exemption without filing the certification form because I was the original owner/holder of the entire Little Bear Claim Group and had quit claimed all but the 10 remaining claims to other claimants. Ms. Hartman assured me that the certification forms which I filed on behalf of the other claimants were in order, that all other filing requirements had been met, and that all of the above claimants, including myself, would receive the Small Miner's Exemption.

(Affidavit at 4-5).

Appellant did not learn that his claims had become void until an inquiry from a prospective purchaser prompted him to call BLM about their status in February 1994. Lynn McClure advised him that his claims were lost and queried why appellant had not filed a form for himself as he had done for the other claimants. Appellant explained that he had been told on August 31 that it was not necessary to do so. He visited BLM on March 1 and states that McClure advised him that "the problem could be cured if I would relocate the claims" (Affidavit at 6).

Over the next 2 days, appellant attempted to relocate the claims, filing location notices with the county and faxing copies to BLM. 2/ On March 4, however, McClure told him that the claims could not be relocated because they were in the Gospel Hump Wilderness Area. On March 8, BLM issued its separate decisions declaring the original claims abandoned and void and the relocated claims null and void ab initio.

2/ We note that Idaho State law requires monumentation of relocated claims. See Idaho Code § 47-607.

We do not doubt that appellant intended to keep 10 of the 45 claims, but we have difficulty understanding how BLM could have offered the advice it purportedly did. The statute requires any small miner seeking the exemption to file the certificate; there are no exceptions. Had appellant never owned more claims than the 10 he kept, there would have been no question that he was required to file a certificate, even though he was the "original" owner. The reputed advice of BLM's employees makes sense only if they failed to understand that appellant intended to retain 10 claims and instead mistakenly believed that appellant had quitclaimed all of his claims and was filing the certificates for the new owners. We recognize that the complexity of a transaction increases the possibility of misunderstanding when oral advice is requested. Nevertheless, for the purposes of disposing of this appeal, we will assume the facts are as appellant states them.

Appellant asserts that BLM is estopped from declaring his claims abandoned and void on the basis of the four elements of estoppel described in United States v. Georgia-Pacific Co., 421 F.2d 92, 96 (9th Cir. 1970):

> (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury.

Appellant asserts that BLM knew the facts because the requirements are found in BLM's own regulations and BLM knew that the claims were in a wilderness area. Appellant asserts that by referring him to Deery and Hartman for advice, BLM intended that their advice would be acted upon, that he had a right to believe that it was so intended, and that he relied on their advice to his injury. Appellant's estoppel claim, however, founders on the third requirement, that he be ignorant of the facts.

[2] In his attempt to satisfy the estoppel requirements, appellant characterizes his ignorance of law as ignorance of the facts and asserts that had he known the true facts, he would not have sought the advice of the BLM employees to whom he was directed. Nevertheless, all persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lester W. Pullen, 131 IBLA 271 (1994). To hold that the notice imparted by the enactment of legislation can be negated by an executive branch employee's oral statements would give that employee the power to nullify the action of the legislature in a manner clearly not contemplated by the Constitution.

Appellant contends that he was not given an adequate opportunity to become familiar with the requirements which were published just over a month before compliance with their provisions became necessary. Appellant refers to the Court's opinion in United States v. Locke, 471 U.S. 84, 108 (1985), which upheld the provision for abandonment of mining claims for failure to comply timely with filing requirements imposed by the Federal

Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994), in part because the statute provided adequate notice by giving claimants 3 years in which to familiarize themselves with its requirements. Nevertheless, we could accept appellant's argument with respect to the rental fee legislation only by holding that the statute itself was not effective in imparting adequate notice.

[3] In a case in which the claimant, unlike appellant, had never received actual notice of the rental fee requirement prior to receipt of the BLM decision, we responded to an argument based on adequacy of notice as follows:

> Although this Board has no authority to declare an act of Congress or a duly promulgated regulation unconstitutional, see Amerada Hess Corp., 128 IBLA 94, 98 (1993), we find this Act as implemented by BLM to be consistent with the constitutional requirements set forth in the Locke and Texaco [3/] cases. It was within Congress' authority to mandate specific notice requirements in the statute but, for whatever reasons, it did not. While the grace period in the instant case is less than the period allowed by the statute in Texaco, appellants acknowledge the efforts of BLM to notify claimants by individual mailing and by newspaper publication. Notice of rulemaking was published in the Federal Register. 58 FR 12878 (Mar. 5, 1993) (proposed rules); 58 FR 38186 (July 15, 1993) (final rules). Although it is regrettable that appellants apparently never received actual notice of the rental fee requirement prior to receipt of the BLM decision, it appears that the notice provided is in compliance with the due process requirements as applied by the courts.

Dee W. Alexander Estate, 131 IBLA 39, 43 (1994). A claimant's assertion that he has not been given an adequate opportunity to become familiar with the rental fee requirements imposed by an Act of Congress provides no basis for reversing a decision declaring his claims abandoned and void for failure to comply with those requirements. See Carol E. Shaw, 136 IBLA 84, 86 (1996).

In Locke, mining claims were declared abandoned and void because the claimant filed affidavits of assessment work required by 43 U.S.C. § 1744 (1994) on December 31 instead of prior to December 31, and the Supreme Court was confronted with a similar argument that the Government was estopped. Locke, supra at 89-90 n.7. Locke likewise supported his argument with an affidavit that a BLM employee had erroneously stated that the filings had to be made on or before December 31. Unlike this appeal, however, the claimant also offered a BLM pamphlet giving the same erroneous advice.

3/ Texaco, Inc. v. Short, 454 U.S. 516 (1982).

While expressing no view as to whether the claimant could prevail in its estoppel claim, the Court cited its decision in Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51 (1984). In that case, the Court declined to apply estoppel without the presentation of a written document containing the erroneous information:

> The appropriateness of respondent's reliance is further undermined because the advice it received from Travelers was oral. It is not merely the possibility of fraud that undermines our confidence in the reliability of official action that is not confirmed or evidenced by a written instrument. Written advice, like a written judicial opinion, requires its author to reflect about the nature of the advice that is given to the citizen, and subject that advice to the possibility of review, criticism and reexamination.

Id. at 65.

[4] Appellant recognizes that we have held that oral misstatements cannot support a claim of estoppel and that "reliance must be predicated on a crucial misstatement in an official decision." Compare Leitmotif Mining Co., 124 IBLA 344, 347-48 (1992), with Martin Faley, 116 IBLA 398, 402 (1990). Appellant nevertheless contends that an exception should be made in this case because he specifically contacted BLM for advice and was referred to Deery and Hartman, who made crucial misstatements of law. Alternatively, he contends that the "official decision" requirement is satisfied by the regulations and BLM's decision "placing agents in a position to interpret BLM regulations who misrepresented the steps the Appellant was required to follow in order to comply with the new regulations." Appellant's arguments, however, do not overcome the concerns expressed above by the Court about the reliability of oral advice. Moreover, a written document preserves the evidence of the mistaken advice in a way that diminishes speculation as to whether the employees really understood the question being asked.

Appellant has requested a hearing to establish the authority and qualifications of certain Idaho State Office personnel to interpret BLM regulations and provide legal advice. This request, however, is controlled by Departmental regulation 43 CFR 1810.3, which provides that the United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit. Because the text of the regulation makes further inquiry into the authority of BLM's employees unnecessary, appellant's request for a hearing is denied. Accordingly, we must affirm BLM's decision declaring the claims abandoned and void.

We turn now to Lexa's appeal from BLM's decision declaring his attempted relocations of those claims null and void ab initio. Under section 4(a)(1) of the Endangered American Wilderness Act of 1978, P.L. 95-237, 92 Stat. 40, 43 (1978), the land on which appellant's claims were

located was included in the Gospel Hump Wilderness Area and designated as part of the National Wilderness Preservation System. An area so designated is managed in accordance with the provisions of the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136 (1994), which withdrew the lands designated as wilderness from all forms of appropriation under the mining laws, effective January 1, 1984. 16 U.S.C. § 1133(d)(3) (1994). Section 5 of the Endangered American Wilderness modified the effective date of the withdrawal to January 1, 1989, so that the lands at issue were no longer subject to location under the mining laws when appellant located his claims in 1994.

[5] Rights acquired under a relocation of a mining claim determined to be abandoned and void for failure to timely pay the rental fee or file a certificate of exemption do not relate back to the date of the location of the original claim, but only to the date of relocation. Carol E. Shaw, supra at 89; see also Steven A. Beld, 136 IBLA 142 (1996); Florian L. Glineski, 87 IBLA 266, 268-69 (1985). When such a claim is located on land withdrawn from mineral entry, it is properly declared null and void ab initio. Id.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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T. Britt Price
Administrative Judge

I concur:

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James L. Burski
Administrative Judge